The first compensation statute passed in this country, that of Maryland, was declared unconstitutional by the Baltimore Court of Common Pleas on the ground that it vested judicial powers in the Insurance Commissioner. The decision, which was not appealed from, is not officially reported, but can be found in the QUARTERLY JOURNAL OF ECONOMICS, issues of August, 1902, p. 591, and February, 1905, p. 320. The case is that of *Franklin* v. *United Railways & Elec. Co.*

The Kentucky statute, held invalid in *Kentucky State Journal Co.* v. *Workmen's Compensation Board*, 170 S. W. 1166 (affirmed 172 S. W. 674) is elective in form as to employer and employe.

The Massachusetts statute, held constitutional in *Opinion of Justices*, 209 Mass. 607, 96 N. E. 308, and in *Young* v. *Duncan*, 106 N. E. 1; the original Illinois statute, held constitutional in *Debeikis* v. *Link-Belt Company*, 261 Ill. 454, *Crooks* v. *Tazwell Coal Company*, 263 Ill. 343, and *Dietz* v. *Big Muddy Coal & Iron Company*, 263 Ill. 480; the Kansas statute, held constitutional in *Shade* v. *Ash Grove Lime & Portland Cement Company*, 139 Pac. 1193 (affirmed 144 Pac. 249); the Minnesota statute, held constitutional in *Matheson* v. *Minneapolis Street Railway Company*, 126 Minn. 286, 148 N. W. 71, and *State ex. rel. Nelson-Spelliscy Company* v. *District Court of Meeker County*, 150 N. W. 623; the New Jersey statute, held constitutional in *Sexton* v. *Newark District Telephone Company*, 34 N. J. L. 368, 86 Atl. 451 (affirmed 91 Atl. 1070), *Troth* v. *Millville Bottle Works*, 91 Atl. 1031, and *Huyett* v. *Pennsylvania R. R. Co.*, 92 Atl. 58; the Texas statute, held constitutional in *Memphis Cotton Oil Company* v. *Tolberd*, 171 S. W. 309; the Wisconsin statute, held constitutional in *Borgnis* v. *Falk Company*, 147 Wis. 327, 133 N. W. 209, are all elective in their nature.

In conclusion it may be observed that while the Supreme Court of the United States, in second *Employers' Liability Cases*, 223 U. S. 1, 32 Sup. Ct. 169. laid down an extremely broad rule of interpretation of statutes drawn under the police power, there is a vital distinction between the Federal Employer's Liability Act of 1908, which was before the court, and a compulsory Workmen's Compensation Act. The distinction is that the Federal Act, while greatly changing the rules of the common law, does not permit of recovery against an employer unless there is some manner and degree of fault on his part; whereas in a true compulsory Workmen's Compensation Law, fault plays no part.

RUSSELL B. JAMES.

AMENDMENT OF JUDGMENT AND RECORD OF JUDGMENT.—The power of the court to amend its judgment came into question in the late case of *People* v. *Petit* (Ill. 1915) 107 N. E. 830. Abbreviated entries of the judgment in the case appeared in the minute book of the judge's minute clerk, in the docket kept by the clerk, and on the wrapper files of the case, but the judgment was not entered in the court record book. An execution on the judgment was issued after the term against the defendant, and thereupon the defendant made a motion to expunge the entries of the clerk. Upon the filing of the motion the judge issued an order that the execution be stayed and that the clerk spread upon the record no further orders in the case without

notice from the judge. The action in the principal case was begun by a petition for a mandamus to compel the judge to vacate this order. The order involved a change in a judgment which all parties admitted had been given, and the appellate court, holding that a judge has no power to modify a judgment after the term, granted the writ of mandamus.

The record of a judgment may stand in need of change on account of either of two classes of errors. First, there may be an error in the judgment itself as given by the court. Second, the mistake may be not in the judgment itself, but in the record of the judgment through some error which renders the record different from the judgment actually given. At common law the court rendering the judgment could correct neither of these errors after the term. (COKE LITT. 260a; 3 BLACK. COMM. 407). During the term, however, the court had full power to set aside, vacate, or modify its judgments, and to correct the record of its judgments. The modification of this rule now existing is to the effect that the court, after the term, may correct any error in the record of the judgment to make the record correspond to the judgment actually given. *Brooks* v. *R. R. Co.*, 102 U. S. 107; *Public Schools* v. *Walker*, 9 Wall. 603; *Brown* v. *Aspden*, 14 How. 25; *Cameron* v. *McRoberts*, 3 Wheat. 591; *Sibbald* v. *United States*, 12 Pet. 480; *United States* v. *The Brig Glamorgan*, 2 Curtis C. C. 236; *Bradford* v. *Patterson*, 8 Ky. (1 A. K. Marsh.) 464; *Ballard* v. *Davis*, 26 Ky. (3 J. J. Marsh.) 656; *Goldreyer* v. *Cronan*, 76 Conn. 113, 53 Atl. 594; *Bronson* v. *Schulten*, 104 U. S. (14 Otto) 410; 26 L. ed. 997.

The only order in the principal case which could have been supported upon the authorities would have been one purporting to stay judgment or do some other act in pursuance of a correction of the record of the judgment. It is apparent, then, in these cases that the nature of the evidence which will warrant the judge, in issuing an order purporting to correct the record, is a matter of vital importance. An order which on its face changes the record may in fact change the judgment itself. In avoidance of this danger the rule of English practice has been adopted in many of the United States. This is to the effect that there may be no correction of any final judgment or decree after the term unless there is sufficient record evidence, or evidence in the nature of record evidence, to amend by. This rule is put as follows in *Hudson* v. *Hudson*, 20 Ala. 364, 56 Am. Dec. 200: * * * "No judgment can be amended, or one rendered *nunc pro tunc*, unless such amendment or rendition of judgment be authorized by matter of record, or by some entry made by or under the authority of the court, which entry must be shown by the record of the cause, or at the least by some book belonging to the office of the court and required to be there kept by law." This rule obtains strictly in Alabama, (*Armstrong* v. *Robertson*, 2 Ala. 164; *Brown* v. *Bartlett*, 2 Ala 29; *Rains* v. *Ware*, 10 Ala. 623; *Hudson* v. *Hudson*, 20 Ala. 364, 56 Am. Dec. 200; *West* v. *Galloway's Adm'r*, 40 Ala. 596, 91 Am. Dec. 494; *Pettus* v. *McClannahan*, 52 Ala. 55; *Lilly* v. *Larkin*, 66 Ala. 122); in Mississippi, (*Moody* v. *Grant*, 41 Miss. 565; *Shackelford* v. *Levy*, 63 Miss. 125); in Kentucky, (*Hendrix's Heirs* v. *Clay*, 2 A. K. Marsh. 462; *Norton* v. *Sanders*, 7 J. J. Marsh. 12; *Stephens* v. *Wilson*, 14 B. Mon. 88, *Finnell* v. *Jones' Ex'x* 7 Bush 359; but

see *Monarch* v *Brey*, 106 Ky. 688, in which an entry in minute book, "12,435—*Brey* v. *Thomas*—"Judg.," was held sufficient evidence to warrant entry of judgment *nunc pro tunc*); and in Indiana (*Makepeace* v. *Lukens*, 27 Ind. 435, 92 Am. Dec. 263). It has been held under this rule that the evidence to warrant amendment must be strictly of record, that notes or minutes of the judge on the docket are not sufficient (*Hudson* v. *Hudson*, 20 Ala. 364; 56 Am. Dec. 200), and that a memorandum in the handwriting of the judge upon the docket of the probate court is not sufficient (*Metcalf* v. *Metcalf*, 19 Ala. 319).

The tendency seems to be, however, toward considering minutes in the case of the judge, entries in the minute books, and other written memorials not strictly of record, as sufficient evidence of the fact. This has been held even in Alabama where the strictest rule prevails. *West* v. *Galloway's Adm'r*, 33 Ala. 306. Following are decisions to the same effect. *Gillett* v. *Booth*, 95 Ill. 183; *Jones* v. *Field*, 80 Ia. 281; *Burns* v. *Sullivan*, 90 Mo. App. 1; *Sullivan's Sav. Inst.* v. *Clark*, 12 Nebr. 578; *Nicklin* v. *Robertson*, 28 Ore. 278, 42 Pac. 993, 52 Am. St. Rep. 790.

To the contrary are decisions in several states, that the record may be amended on any evidence before the court, and, further, that the court takes judicial notice of what takes place in open court and requires only what will suffice to refresh its memory as to what actually happened. *O'Dell* v. *Reynolds*, 70 Fed. 656, 660, 17 C. C. A. 317; *Christian* v. *Bartlett*, 73 Kan. 401, 85 Pac. 594; *Lewis* v. *Ross*, 37 Me. 230, 59 Am. Dec. 49; *Fink* v. *Fink*, 43 N. H. 508, 80 Am. Dec. 189; *Sullivan's Sav. Inst.* v. *Clark*, 12 Nebr. 578; *Hollister* v. *Judges*, 8 Ohio St. 201, 70 Am. Dec. 100; *Balch and Wife* v. *Shaw*, 61 Mass. (7 Cush.) 282. In *Wyman* v. *Buckstaff*, 24 Wis. 477, the court was sustained in amending on memory of the judge alone.

It seems that the modification of the strict English rule first given, that the judge may amend the record by corrections based upon written matters quasi of record or other official written memorials in the case is the best both as a matter of public policy and of expediency. Under this doctrine the parties are protected from arbitrary rulings of the judge and from clerical errors for which they are not responsible, while at the same time sufficient protection is given to the stability of court records. This is especially true since the exercise of the power to amend the record is usually held to be within the sound discretion of the court, which is exercised to prevent injustice to third parties who have relied on the previous entry of judgment or absence of entry. *Ninde* v. *Clark*, 62 Mich. 124, 4 Am. St. Rep. 823, 28 N. W. 765; *McCormick* v. *Wheeler*, 36 Ill. 114. H. H.